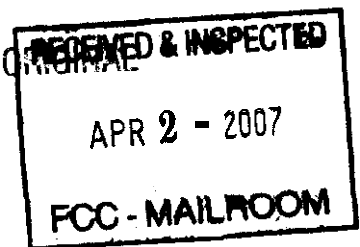


DOCKET FILE COPY ORIGINAL

Riverstone Partners
E Rate Consulting



March 29, 2007

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Subject: Appeal of USAC Funding Decision - Docket 02-6

Request for Review

Audrey Lorde School submits the following Request for Review by the FCC of a funding denial decision issued by USAC.

The attached appeal document outlines the reasons for the USAC decision and the issues Audrey Lorde School would like the FCC to consider.

A letter of authorization from Audrey Lorde School is attached.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Sniecinski".

Robert Sniecinski
RiverStone Partners, LLC
106 Lilac Drive
Annandale, NJ 08801
9087356986
908 735 2839 fax
E mail: erate@earthlink.net

No. of Copies rec'd 0
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448 West 56 Street, New York, NY 10018
(212) 262-0817 Fax: (212) 262-1421

Joan M. Indart, Principal

Career Education Center

December 19, 2005

To Whom It May Concern;

This letter is to confirm that the Audre Lorde School, located at Green Chimneys, 327 East 22nd Street, New York, NY 10016, is part of the Career Education Center, an alternative high school program under the auspices of the New York City Department of Education.

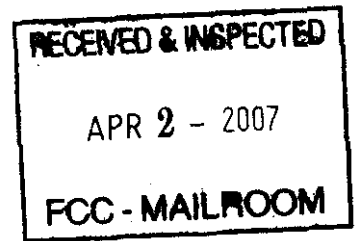
Career Education Center provides a GED program to all students attending this school. All students are provided with an academic program consisting of 5 ½ hours of instruction per day. In addition, the students are entitled to participate in all after school activities and tutorials and all school-authorized trips and events. This semester the average daily register for Green Chimneys was 25 with an average daily attendance of 80%. All students (100%) at this Green Chimneys site are eligible for free lunch under the guidelines of the New York City Department of Education.

Please feel free to contact me if you require any additional information

Very truly yours,


Joan M. Indart
Principal





Audrey Lorde School

Request for Review

Docket No. 02-6

USAC Denial of **Audrey Lorde** Appeal

Funding Year 2006

FCC Appeal Date March 29,2007

Appellant Name: Audrey Lorde School

Applicant BEN: 228433

Application Numbers: 520320, all FRNs.

Service Providers:

CDW-G SPIN 143005588

American Business Communications SPIN 143027269

Summary:

Audrey Lorde School filed an appeal with USAC following the denial of **the** above application by PIA for the following reason: "This funding request is denied as a result of a Cost Effective Review, which has determined that your request for Internal Connections/Basic Maintenance of IC has not been justified **as** cost effective as required by FCC rules". The USAC Appeal was denied on February 2,2007 based on the number of staff and students in this special needs school sponsored by the State of **New York**. The USAC denial is attached.

Audrey Lorde requests an FCC review/waiver ~~of~~ this denial decision.

Audrey Lorde Issues:

The issues we would like the FCC to consider in this request are:

1 -- The vendor selection process adhered to all USAC guidelines.

2 – Audrey Lorde School agrees that the requested products and services will serve a small number of students, however, under New **York** State law and in accordance with the No Child Left Behind Act these students are entitled to the **same** level of educational technology as any other school.

3 – The initial cost effective reviewer requested a great deal of disconnected information. A response was provided to each individual question but the school was not given an opportunity to provide any clarification to the individual responses. There was no follow up on the part of the reviewer. When asked **for** clarification on **the** guidelines for a cost effective review we were directed to the web site. Please **see** USAC Appeal documents – attachment C. **We** hope you will agree that these web pages provide no help **or** direction in responding to the cost effective review.

4 - Reviewer did not provide any assistance as referenced in the USAC guidelines. “If you have any questions please contact the USAC reviewer.” When the reviewer was contacted we were told “we ask the questions and you provide the answers”. Reviewer again directed Audrey Lorde School to the USAC web site which provided no information regarding cost effective reviews. Please **see USAC** appeal document – attachment C.

5 - The cost effective review request for information has changed. The cost effective review document received by Audrey Lorde School on July 3, 2006 did not include any examples. More recent requests for information relating to cost effective reviews provides examples that benefit the applicant. Audrey Lorde did not have the benefit of these examples.

6 – The Academia Order clearly states that the “Commission rules, however, do not expressly establish a bright line test **for** what is a cost effective service.” The denial decision on the part of PIA and USAC appears to be arbitrary and capricious.

7 – The special needs of the school are well documented in the **USAC** appeal. Has **USAC** determined that it is not cost effective to spend this much money on a few students that have not other educational alternative. If so, this reasoning is different that the cost effectiveness issue addressed in the Yselta decision.

8 – The educational community knows that the cost to educate special needs students far exceeds normal educational costs on a cost per student basis. Targeting special needs schools which most always have a limited number of students and a higher individual cost per student appears to be discriminatory and puts a high burden on the school to answer and appeal USAC decisions when the explicate purpose of the Universal Service program is to provide a mechanism to make communications services available in areas of high unit cost.

If there is no bright line test, the cost effective reviewer did not consider all the documentation, no follow up opportunity was provided to Audrey Lorde to clarify

information and current applicants undergoing a cost effective review **are** provided the benefit of examples in the review questions, it appears that the school was at an extreme disadvantage in complying with the cost effective review.

Audrey Lorde School believes that they have met two of the four circumstances that qualify for a granting/reconsideration of this request. (Circumstance 1) When the appeal makes clear that USAC erred in its initial review. (Circumstance **4**) When USAC obtains policy clarification or new policies between the time of the funding commitment and the appeal decision. Appeals procedure guidelines attached.

For these **reasons** we request that the FCC should overrule the USAC denial and grant approval of the original application.

RiverStone Partners, LLC
E rate Consulting

November 28,, 2006

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
100 South Jefferson Road
PO Box 902
Whippany, NJ 07981

Subject: Appeal of Funding Commitment Decision – Application 520320

This is an appeal of a funding denial decision for cost effectiveness dated October 3, 2006 for Audrey Lorde School.

We believe this decision is in fact discriminatory against special needs students and that the cost effective evaluation process is seriously flawed. Audrey Lorde **is** a school for special needs students. From discussions with other schools that provide similar services within the State, it appears special needs schools are being targeted for these cost effective reviews.

When **the** Telecommunications Act became law in 1996 and established the “universal service” program for schools and libraries, federal mandates about educating children with disabilities were in place **for more** than twenty years. Since the passage of the Education of the Handicapped Act in 1975 (Public Law 94-142), all children with disabilities are entitled to “a free and appropriate public education which includes special education and related services to meet their unique needs.” This **was** reaffirmed in the 1990 Individuals with Disabilities Act (Public Law 101-476).

It is patently objectionable and plainly wrong **for the** Universal Service Administrative Company (“USAC”) to reject Audrey Lorde’s application for universal service funding for network internal connections. The children served by Audrey Lorde School have severe disabling emotional and psychological conditions. Many have multiple condition diagnoses often requiring one-on-one teaching and student supervision. The individual educational plans (I. E. P.’s) prescribed by Federal and State statutes **for** each child **are** carefully and fully detailed with involvement of pertinent school districts and social service agencies.

USAC’s refusal of Audrey Lorde’s funding requests discriminates against the very children who need the tools that “universal service” is intended to provide. Audrey Lorde School must receive its benefit under the Telecommunications Act so it has the electronic capability to address the needs of these children and provide for the most effective educational experience possible.

The USAC cannot subject Audrey Lorde's request to a funding screen based on relative cost effectiveness per student. This mechanism is not authorized by ~~Part~~ 54 of Title 47 of the Code of Federal Regulations governing "universal service" and its system of resource allocation. Schools like Audrey Lorde that serve a proportionately small number of children with severe impairments would never be eligible for assistance if the approach used is allowed to stand. Congress never intended this and USAC is not fulfilling its requirements under federal law.

The direction and assistance provided by USAC to us to complete a cost effective review is, at best, minimal compared to the directions given for a PIA review or a selective review. Directions to comply with these reviews are extensive and readily available on the USAC website. This is not true for a cost effective review.

Audrey Lorde does not have the luxury to hire staff to handle all the administrative requirements imposed by the E rate program. Special needs schools invest in staff to support the needs of their students not the support of the administrative load imposed by the E rate program. As you will ~~see~~ in the attached documentation ~~we~~ followed all the directions provided to us by USAC for the cost effective review. Based on comparative pricing and ~~the~~ USAC two in five rules, we believe these are fair and competitive prices for our technology needs.

Additionally, the cost effective review process appears flawed. It is clearly stated in the FCC Academia Order (attached) that, "The Commission rules, however, do not expressly establish a bright line test for what is a "cost effective service". In the absence of these rules it is difficult to understand how an objective decision can be made relative to ~~the~~ issue of cost effectiveness. E rate is a rules based program designed to provide consistency and fairness in the decision making process for all applicants. If there are no clear rules how can there be any consistency in ~~the~~ review process across applications? If there ~~are~~ no clear directions for the applicants, it places an unnecessary load on ~~the~~ school administration to understand what is required. This looks like "send me what you have and I'll let you know if you are right". In all other reviews there is ~~an~~ opportunity for some type of dialogue for clarification between the reviewer and the applicant.

Audrey Lorde respectfully requests that the denial be reconsidered based on the information provided. ~~We~~ would be happy to meet with you regarding this appeal at your earliest convenience.

A Letter of Agency from Audrey Lorde School is attached.

Sincerely,

Robert Sniecinski
President

RiverStone Partners, LLC
106 Lilac Drive
Annandale, NJ 08801
Phone: 908 735 6986
Fax: 908 735 2839
E mail: eratetJearthlink.net

copy:
FCC
Audrey Lorde

Attachments:
LOA
Appeal Document
Cost Effective Review Submission
Academia Order

Audrey Lorde **School**

Appeal of USAC Decision

Funding Commitment Decision Letter dated October 3,2006

Funding **Year** 2006

Appeal Date November 28,2007

Appellant Name: Audrey Lorde School

Applicant BEN: 228433

Application Number: 520320, all FRNs.

Service Providers:

CDW-G SPIN 143005588

American Business Communications SPIN 143027269

Appeal of USAC Decision: This funding request is denied as a result of a Cost Effective Review, which has determined that your request for Internal Connections/Basic Maintenance of IC has not been justified as cost effective as required by FCC rules.

According to the FCC Order dated August 15,2006 (the Academia Order), specifically footnote **29**, “The commission rules, however, do not expressly establish a bright line test for what is a “cost effective service”.” It is difficult to understand how the FCC/USAC can deny **an** application for not being cost effective when **there** have not been rules/tests established for determining what is a cost effective service.

On the USAC website there are clear rules and guidelines for **the** E rate application process, the selective review **process** and completing all forms necessary to comply with the Eate program. However, **there** are no clear rules or guidelines for a cost effective review. E rate is a rules based **program**. It is difficult to comply when there are no documented **rules**.

Special Needs Students

The Audrey Lorde School is a **K-12** educational institution based New York City. Audrey Lorde School is sponsored by the NYC Board of Education and in many cases the school offers the **only** educational opportunity available to our special needs students. Due to their special needs the staff to student ratio is greater than 1:1. The school addresses the needs of lesbian, gay, bisexual, transgender, and questioning youth who have been unable to complete high school in traditional settings. **All** of our students have faced difficulties in mainstream schools due to harassment, discrimination, and at times physical abuse. The students have a wide range of academic, cognitive, and social functioning levels, creating a diverse classroom setting.

These students all have a traumatic personal history of being removed from their families either by voluntary or involuntary placement. Often times, parents/guardians are unable to cope with the gender variant behavior that is seen in the youth in this program. Along with dealing with their acceptance of their child's **sexual** orientation/gender identity, parents/guardians have to deal with the acting out that may come along with adolescents who have psychiatric issues and/or are using illegal substances. Many of them are dealing with Post Traumatic Stress Disorder due to abuse they were victims of as children.

These students are in need of a special setting in which they are accepted for who they are rather than problematized and outcasted. In mainstream settings, they face being ostracized for their sexual orientation and gender presentation and are unable to focus on the learning that needs to happen in school. They miss out not only on the education but also **on** the much-needed socialization which helps them know how to behave appropriately in a classroom. Mainstream settings teach them that they are "different" and therefore not as important as others. In the Audrey Lorde School, diversity regarding sexual orientation and gender presentation/identity are celebrated and not looked at **as** a problem to be fixed. This allows the students to focus on what is really important: learning.

These students have a number of learning difficulties and mental health issues to complicate their journey to earning a degree. The majority of them are **2-4** grade levels behind in their reading abilities and most of them are at least **4 levels** behind in their mathematics skills. Many of them struggle with attention and concentration difficulties, including Attention Deficit Disorder. A number of them also have social anxiety and fear related to classroom settings both because of past experience and because of psychiatric issues. Each of them has poor organizational and study habits resulting from a lack of stability in their home lives, lack of consistency with school attendance, and various learning deficits. Several of the students have been given diagnoses of ADHD, Conduct Disorder, and Major Depression. **All** of these needs **are** better served in a small classroom setting that has been provided to them by the Audrey Lorde School. They

receive a great amount of individual instruction and resources that they would not receive otherwise.

The Audrey Lorde program has enabled many youth who would not succeed in other programs to obtain their degree and begin their journey to self-sufficiency. Without the proper resources in this classroom, the Audrey Lorde School will be unable to properly prepare these youth to pass their exams. Computer and internet access are most crucial to fully preparing youth for further education and for jobs. Today's job market is fiercely competitive and these students need high levels of computer skills in order to compete for jobs as well as for furthering their education at college.

The funding from our E rate application was to be used to upgrade and maintain our communications systems that go down on a monthly basis. As you are aware technology plays an important part in helping students learn and apply **the** basic skills and information necessary to contribute in our society. Without **this** technology our special needs students will only fall farther behind.

Special Circumstances

FRN 1432234 – Service Provider – CDW-G

Audrey Lorde is a unique educational alternative for special needs students. There is currently a shortage of these types of educational institutions. Audrey Lorde is currently working with the New York City Department of Education on expansion plans to offer this alternative educational environment to a larger population. This FRN is structured to take into account this expansion. It is more cost effective to install this technology one time than to upgrade on an **annual** basis. In addition the **2 in 5** rule will only allow funding for internal connections twice in **5** years.

FRN 1432244 – American Business Communications – Toshiba Phone System

The current phone system goes down on almost a weekly basis. Obviously the current system is in urgent need of replacement and modernization. As mentioned in the response above Audrey Lorde is working on expansion plans. This FRN is designed to handle this expansion. Installing this system now is more cost effective than upgrading at a future time. Also, taken into consideration is the USAC **2 in 5** restriction. Upgrading now is more cost effective than doing it in stages over the coming years.

FRN 1432248 – American Business Communications – Cabling

The current Audrey Lorde educational facilities are located in New York City. Installing cabling requires going through concrete walls, use of wire molding throughout the building and adhering to NYC building codes.

FRN 1432253 – American Business Communications – Basic Maintenance – Cabling
Please see response to FRN 1432244.

FRN 1432258 – American Business Communications – Basic Maintenance – Phone System

Please see response to FRN 1432248.

Compliance with USAC instructions

As stated earlier, according to the FCC Order dated August 15, 2006, specifically footnote 29, “The commission rules, however, do not expressly establish a bright line test for what is a “cost effective service”.” It is difficult to understand how the S&LD/USAC can deny an application for not being cost effective when there have not been rules/tests established for determining what is a cost effective service.

Audrey Lorde has complied with the directions provided by USAC.

Audrey Lorde validated the prices quoted for each FRN by comparing them with previous quotes from other service providers from prior funding years and validated the prices as being cost effective for the school by comparing them with commercial pricing available on various web sites.

Audrey Lorde respectfully requests that the denial be reconsidered based on the information provided.

CC: FCC

Attachments:

- 1 – Academia Order
- 2 – Cost Effective Submission for Audrey Lorde

High Unit Cost Review
for
Audre Lorde School

Funding Year 2006

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Section 1 – High Unit Cost Checklist

Section 2 – FRN **Summary**

Section 3 – Contracts

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Section 5 – Bids Responses

Section 6 – Vendor Selection Process

Section 7 – Correspondence

Section 8 – Budget

Section 9 – Cost Effective Review Questions/Answers

Section 10 – Certification

Section 11 –Letter of Agency

Section 1 – High Unit Cost Checklist

The following items on your Form 471 may contain **errors**, but we were unable to detect them during our review process:

- Block 1 - Billed Entity Name, Billed Entity Number **or** Billed Entity contact information.
- Block 4 - Discount calculation worksheets
- Block 5 - Service Provider Identification Number (SPIN) or service provider name (if the change is a corrective rather than operational change)
- Block 5 - Contract number
- Block 5 - Billing account number
- Block 5 - Funds requested in **an** FRN
- Block 5 – Entity(ies)/Worksheet cited in an FRN
- Block 6 – Amount budgeted for ineligible services

If you detect any errors in these items, you can make corrections during the next 15 days. To request a correction, make a copy **of** your Form 471 and draw a line through each incorrect item and mark clearly next to it the corrected information.

It is your responsibility to review your Form 471 application and provide corrections to us. All corrections should be submitted to me by **fax or email**.

High Unit Cost Review Information Request Checklist:

Please complete and return with your response:

| Items to be returned to the E-Rate Reviewer | Document(s) Title & Corresponding FRN ¹ | Status |
|---|--|---|
| Signed & dated contracts and/or other agreements with service providers related to the Form(s) 471 Request For Proposal (RFP) | <i>Previously submitted</i> | <input type="checkbox"/> Enclosed |
| | | <input checked="" type="checkbox"/> Enclosed <input checked="" type="checkbox"/> NIA |
| All bid responses received for all funding requests | | <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> NIA |
| Vendor selection process description (created during the bidding process) | | <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> NIA |
| Signed and dated Consultant Agreement(s) or Letter of Agency | | <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> NIA |
| Correspondence between the consultant/service provider and the school/library regarding the competitive bidding process and the application process | | <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> N/A |
| Budget Information (Approved operating budget or alternative budget documentation for FY 2006) | | <input checked="" type="checkbox"/> Enclosed |
| Cost Effectiveness Review Questions | | <input checked="" type="checkbox"/> Enclosed |
| High Unit Cost Review Certification | | <input checked="" type="checkbox"/> Enclosed |

¹ Write on the first page of the document provided, the FRN **numbers(s)** the document supports.

Section 2 – FRN Summary

After several phone calls to **USAC** (case # **21-422210**) the attached documentation complies with the competitive bidding requirements.

Audrey Lorde established the following as vendor selection criteria in anticipation of filing the 471 application, but received only one bid in response to the 470 application.

Price – 60%

Vendor Reputation – 30%

Experience with E rate – 10%

Since only one bid was received the costs for each item were validated for competitiveness using commercially available websites and were also compared against bids received for similar work at other entities. The current bid and competitive costs were reviewed and approved by the technology committee.

**Audre Lorde School
471 Application Summary**

Form 471 Application Number 504476

Part 1: Information Regarding your Competitive Bidding and Vendor Selection Process

- Contracts and/or other agreements
 - Per our **471** application, all FRNs are for tariff or month to month services.
- Requests for Proposal (RFP)
 - Per our **470** application we did not issue an RFP.
- Bid Responses
 - We received no bids and stayed with our current service provider/s.
- Vendor selection Process
 - See previous page. **No** bids were received we stayed with our current service provider.
- Consulting agreements
 - See attached LOA/consulting agreement section
- Correspondence (E mail, phone logs, etc.)
 - No correspondence. **All** communications were verbal in meetings or by phone.

Form 471 Application Number 520320

Part 1: Information Regarding your Competitive Bidding and Vendor Selection Process

- Contracts and/or other agreements
 - Please see the contracts/Bids section. We received one bid from American Business Communications for cabling and maintenance and one bid from CDW-G for servers.
- Requests for Proposal (RFP)
 - Per our **470** application we did not issue an RFP
- Bid Responses
 - We received one bid.

- **Vendor selection Process**
 - **See previous page. Only one bid was received.**
- **Consulting agreements**
 - **See attached LOA/consulting agreement section**
- **Correspondence (E mail, phone logs, etc)**
 - **No correspondence. All communications were verbal in meetings or by phone.**

Audre Lorde School
FRN Summary 2006

| Audre Lorde School | | | | | | | | |
|--|---------|-----------------------|-----------|-------|----------------------------------|---------|--------------|---------------|
| 470 Application Number 498960000561168 | | | | | | | | |
| 471 # | FRN | T, MTM, Contracted | CAD | #Bids | Service Provider | Service | Type | Discount % |
| 504476 | 1386013 | MTM | na | 0 | BridgeCom | Telecom | Local and LD | 90 |
| 520320 | 1432234 | Contracted | 1/31/2006 | 1 | CDW-G | IC | IC | 90 |
| | 1432244 | Contracted | 1/31/2006 | 1 | American Business Communications | IC | IC | 90 |
| | 1432248 | Contracted | 1/31/2006 | 1 | American Business Communications | IC | IC | 90 |
| | 1432253 | Contracted | 1/31/2006 | 1 | American Business Communications | IC | ICM | 90 |
| | 1432258 | Contracted | 1/31/2006 | 1 | American Business Communications | IC | ICM | 90 |

Section 3 – Contracts

Contracts were previously submitted on August 10,2006.

Section 4 – RFP

Please see Section 2 – FRN Summary